



Order 98-3-16

Served: March 23, 1998

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 17th day of March, 1998

Applications of

**AER TURAS TEORANTA
AIR ARUBA N.V.**

**COMPANIA PANAMENA DE AVIACION S.A.
JAPAN AIRLINES COMPANY, LTD.
JAPAN ASIA AIRWAYS COMPANY, LTD.
LINEAS AEREAS PRIVADAS ARGENTINAS, S.A.
NIPPON CARGO AIRLINES CO., LTD.
PRO AIR CHARTER ARUBA N.V. D/B/A PRO AIR**

for exemptions or authorities under 49 U.S.C.
section 40109 and the orders and regulations
of the Department of Transportation

Dockets	OST-97-2114
	OST-96-1250
	OST-96-1146
	OST-95-110
	OST-97-2675
	OST-98-3449
	OST-96-995
	OST-96-986
	OST-98-3424
	OST-97-2916

ORDER

The foreign air carriers referenced in the attached Notices of Action Taken have applied for various forms of authority or relief from Title 49 of the U.S. Code or regulations or orders of the Department in order to perform the air transportation activities shown in the attached Notices of Action Taken. Except as noted, no answers were filed to these requests. Because of the imminence of these operations, we approved them by telephone, subject to adherence, by each applicant, to the conditions set forth in its foreign air carrier permit, and/or conditions attached.

We carefully considered the information set forth in each application described in the attached Notices of Action Taken, and we found that each of the proposed operations was consistent with the public interest and was consistent with an applicable bilateral aviation agreement and/or our aviation relationship with the applicant's homeland, that each applicant was qualified to perform its proposed operations, and that each application should be approved.

For applicant carriers seeking initial operating authority, we determined, based on the record in those proceedings, that those carriers were financially and operationally qualified to conduct the services they proposed, and, unless otherwise noted, that they were substantially owned and effectively controlled by citizens of their respective homelands.

Under authority assigned by the Department in its Regulations, 14 CFR Part 385, we found that for each operation (1) immediate action was required and was consistent with Department policy; (2) grant of the exemption or authority was consistent with the public interest; and (3) grant of this authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975.

ACCORDINGLY,

1. We confirm the actions described in the attached Notices of Action Taken, which granted the referenced foreign air carriers (1) exemptions from the provisions of sections 41301, and where necessary 41504, and/or other sections of Title 49 of the U.S. Code; and/or (2) relief or authorizations provided for under regulations or orders of the Department, to the applicants to perform the operations described in the attached Notices of Action Taken;
2. In the conduct of the service, each applicant was to adhere to the conditions set forth in Appendix A, and to any other conditions as noted in the attached Notices of Action Taken;
3. To the extent not granted, or explicitly deferred as noted in the attached Notices of Action Taken, these applications are denied; and
4. We may amend, modify, or revoke this order at any time without hearing.

Persons entitled to petition the Department for review of this order under the Department's Regulations, 14 CFR 385.30, may file their petitions within ten (10) days after the date of service of this order. The filing of a petition for review of a particular action shall affect this order only as it concerns that action.

These actions were effective when taken, and the filing of a petition for review will not alter their effectiveness.

By:

PAUL L. GRETCH
Director
Office of International Aviation

(SEAL)

*An electronic version of this document is available on the World Wide Web at
<http://www.dms.dot.gov/general/orders/aviation.html>*

CONDITIONS OF AUTHORITY

In the conduct of the operations authorized, the holder shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are:
 - (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or
 - (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States.

In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;

- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code (formerly the Federal Aviation Act of 1958, as amended).



**U.S. Department of
Transportation**
Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

DOCKET OST-97-2114

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **Aer Turas Teoranta**

Date Filed: February 20, 1998

Relief requested: Exemption from 49 U.S.C. 41301 to conduct passenger charter operations between Ireland and the United States; and other passenger charter operations subject to Part 212 of the Department's rules, for a two year period.

If renewal, date and citation of last action: February 21, 1997, confirmed by Order 97-4-28

Applicant representative: Lorraine B. Halloway (202) 624-2538

Responsive Pleadings: None filed

DISPOSITION

Action: Approved

Action date: March 12, 1998

Effective dates of authority granted: March 12, 1998-March 12, 1999 1/

Basis for approval (bilateral agreement/reciprocity): Air Transport Services Agreement between the United States and Ireland, as amended.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated: Aer Turas' foreign air carrier permit (Order 96-3-10).

Special conditions/Partial grant/Denial basis/Remarks:

(over)

1/ We note that Aer Turas seeks authority for a two year period. However, as is our usual practice in conferring exemption authority in circumstances such as those present here, we are limiting the term of authority to one year. Aer Turas may, of course, seek renewal of this authority in accordance with the Department's regulations.

Action taken by:

Paul L. Gretch, Director
Office of International Aviation
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

DOCKETS OST-96-1250/96-1146 & 95-110

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **Air Aruba, N.V.**

Date Filed: August 11, 1997

Relief requested: Exemption from 49 U.S.C. § 41301 to renew and amend existing authorities to conduct scheduled foreign air transportation of persons, property and mail from points behind Aruba via Aruba and intermediate points to a point or points in the United States and beyond; charter foreign air transportation pursuant to the Air Transport Agreement between the United States and Aruba; and other charters subject to Part 212 of our rules.

If renewal, date and citation of last action: August 13, 1996, confirmed by Order 96-10-17

Applicant representative: Bruce H. Rabinovitz (202) 637-9036

Responsive Pleadings: None filed

DISPOSITION

Action: Approved

Action date: February 27, 1998

Effective dates of authority granted: February 27, 1998-February 27, 2000

Basis for approval (bilateral agreement/reciprocity): July 22, 1997, Air Transport Agreement between the United States and Aruba, in force provisionally (the Agreement)

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated: Standard Exemption Conditions and the Agreement

Special conditions/Partial grant/Denial basis/Remarks:

Action taken by:

Paul L. Gretch, Director

Office of International Aviation

under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



**U.S. Department of
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Office of the Secretary
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NOTICE OF ACTION TAKEN

DOCKET OST-97-2675

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: Compania Panamena de Aviacion S.A. **Date Filed: July 2, 1997**

Relief requested: Exemption from 49 U.S.C. § 41301 to conduct scheduled foreign air transportation of persons, property and mail from points behind the Republic of Panama via the Republic of Panama and intermediate points to a point or points in the United States and beyond; charter foreign air transportation pursuant to the Air Transport Agreement between the United States and the Republic of Panama; and other charters subject to Part 212 of our rules.

If renewal, date and citation of last action: New authority
Applicant representative: John R. Brimsek (202) 296-8000
Responsive Pleadings: None filed

DISPOSITION

Action: Approved

Action date: February 19, 1998

Effective dates of authority granted: February 19, 1998-February 19, 2000

Basis for approval (bilateral agreement/reciprocity): May 8, 1997, Air Transport Agreement between the United States and the Republic of Panama, in force provisionally (the Agreement)

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated: Compania Panamena de Aviacion S.A.'s foreign air carrier permit (Order 85-12-29) and the Agreement

Special conditions/Partial grant/Denial basis/Remarks:

Action taken by:

Paul L. Gretch, Director
Office of International Aviation
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



**U.S. Department of
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NOTICE OF ACTION TAKEN

DOCKET OST-98-3449

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **Japan Airlines Company, Ltd.** Date Filed: February 9, 1998

Relief requested: Exemption from 49 U.S.C. § 41301 to engage in scheduled foreign air transportation of persons, property and mail between any point or points behind Japan via any point or points in Japan and any intermediate point or points and any point or points in the United States and any point or points beyond.

If renewal, date and citation of last action: New authority

Applicant representative: Jeffrey N. Shane (202) 663-6000

Responsive Pleadings: On February 20, 1998, Northwest Airlines, Inc. filed a consolidated answer to the subject application stating that while we should “expeditiously grant” JAL the authority to which it is entitled under the 1998 MOC, grant of such authority should include a statement clarifying that the holder must conduct its operations in accordance with all relevant bilateral agreements between the U.S. or Japan and a third country.

DISPOSITION

Action: Approved

Action date: March 6, 1998

Effective dates of authority granted: March 6, 1998-March 6, 1999

Basis for approval (bilateral agreement/reciprocity): 1998 Memorandum of Consultations (1998 MOC) between the United States and Japan.^{1/}

(over)

^{1/} On January 30, 1998, delegations of the United States and Japan signed a Memorandum of Consultations (MOC) that included attached understandings regarding the elements to be included in a Memorandum of Understanding. The delegations also agreed that the provisions of those understandings would be provisionally in effect upon signing of the MOC, pending conclusion of an interim agreement.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated: JAL's foreign air carrier permit (Order 70-8-66) and the 1998 MOC.

Special conditions/Partial grant/Denial basis/Remarks: With respect to the matter raised by Northwest, we have routinely conditioned grants of foreign air carrier authority of the type involved here so as to make the awarded authority expressly subject to the bilateral agreement between the United States and the foreign carrier's homeland. We followed that approach here. We found no convincing reason in Northwest's answer to go beyond our standard condition.

Action taken by:

Paul L. Gretch, Director
Office of International Aviation
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



**U.S. Department of
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NOTICE OF ACTION TAKEN

DOCKET OST-96-995

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **Japan Asia Airways Company, Ltd.** Date Filed: February 6, 1998

Relief requested: Exemption from 49 U.S.C. § 41301 to conduct scheduled foreign air transportation of persons, property and mail between Nagoya, Japan, and Guam and Saipan.

If renewal, date and citation of last action: March 21, 1997, confirmed by Order 97-4-28
Applicant representative: Jeffrey N. Shane (202) 663-6000
Responsive Pleadings: None filed

DISPOSITION

Action: Approved Action date: February 26, 1998

Effective dates of authority granted: February 26, 1998-February 26, 1999

Basis for approval (bilateral agreement/reciprocity): 1998 Memorandum of Consultations between the United States and Japan.^{1/}

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated: Standard exemption conditions

Special conditions/Partial grant/Denial basis/Remarks:

(over)

^{1/} On January 30, 1998, delegations of the United States and Japan signed a Memorandum of Consultations (MOC) that included attached understandings regarding the elements to be included in a Memorandum of Understanding. The delegations also agreed that the provisions of those understandings would be provisionally in effect upon signing of the MOC, pending conclusion of an interim agreement.

Action taken by:

Paul L. Gretch, Director
Office of International Aviation
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



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NOTICE OF ACTION TAKEN

DOCKET OST-96-986

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **Lineas Aereas Privadas Argentinas, S.A.** Date Filed: January 7, 1998

Relief requested: Exemption from 49 U.S.C. § 41301 to conduct charter foreign air transportation of persons, property and mail between Argentina and the United States; and to perform other charters in accordance with Part 212 of the Department's rules.^{1/}

If renewal, date and citation of last action: New authority

Applicant representative: Pierre Murphy (202) 872-1679

Responsive Pleadings: On January 26, 1998, the Government of Puerto Rico filed an answer in support of LAPA's request. Puerto Rico's answer was accompanied by a motion to file an otherwise unauthorized document.

DISPOSITION

Action: **Approved**

Action date: February 5, 1998

Effective dates of authority granted: February 6, 1998-February 6, 1999

Basis for approval (bilateral agreement/reciprocity): Reciprocity with Argentina

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated: Standard exemption conditions and the prior approval requirement for charter operations contained in Order 95-2-29.

Special conditions/Partial grant/Denial basis/Remarks:

(over)

^{1/} This authority, unlike LAPA's past Department exemption authority, does not contain the condition that its services be conducted under a wet lease with American Trans Air. See Orders 95-2-29 and 95-2-5. LAPA may now conduct its Argentina-U.S. charter operations with its own aircraft and crews.

Action taken by:

Paul L. Gretch, Director
Office of International Aviation
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



**U.S. Department of
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NOTICE OF ACTION TAKEN

DOCKET OST-98-3424

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **Nippon Cargo Airlines Co., Ltd.**

Date Filed: February 4, 1998

Relief requested: Exemption from 49 U.S.C. § 41301 to conduct scheduled foreign air transportation of property and mail between points in Japan and Portland, Oregon, and to serve Portland as a coterminal point on its authorized all-cargo services.

If renewal, date and citation of last action: New authority

Applicant representative: James L. Devall (202) 298-8660

Responsive Pleadings: On February 9, 1998, the Port of Portland filed an answer in support of NCA's request. No other answers were filed.

DISPOSITION

Action: Approved

Action date: February 13, 1998

(We acted on NCA's application without awaiting expiration of the 15-day answer period with the consent of all parties served.)

Effective dates of authority granted: February 13, 1998-February 13, 1999

Basis for approval (bilateral agreement/reciprocity): 1998 Memorandum of Consultations between the United States and Japan.^{1/}

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated: NCA's foreign air carrier permit (Order 90-4-4) and the 1998 MOC.

Special conditions/Partial grant/Denial basis/Remarks:

(over)

^{1/} On January 30, 1998, delegations of the United States and Japan signed a Memorandum of Consultations (MOC) that included attached understandings regarding the elements to be included in a Memorandum of Understanding. The delegations also agreed that the provisions of those understandings would be provisionally in effect upon signing of the MOC, pending conclusion of an interim agreement.

Action taken by:

Paul L. Gretch, Director
Office of International Aviation
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



**U.S. Department of
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NOTICE OF ACTION TAKEN

DOCKET OST-97-2916

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **Pro Air Charter Aruba N.V. d/b/a Pro Air** Date Filed: September 18, 1997

Relief requested: Exemption from 49 U.S.C. § 41301 to conduct charter foreign air transportation pursuant to the Air Transport Agreement between the United States and Aruba; and other charters subject to Part 212 of our rules.

If renewal, date and citation of last action: New authority
Applicant representative: Rubert M. Richards (011 2 978 29197)
Responsive pleadings: None filed

DISPOSITION

Action: **Approved**

Action date: March 4, 1998

Effective dates of authority granted: March 4, 1998-March 4, 2000

Basis for approval (bilateral agreement/reciprocity): July 22, 1997, Air Transport Agreement between the United States and Aruba, in force provisionally (the Agreement)

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated: Standard exemption conditions

Special conditions/Partial grant/Denial basis/Remarks: Based on the record in this case, we found that Pro Air is financially and operationally qualified to perform the services authorized above. In addition, we found that Pro Air is substantially owned and effectively controlled by Dutch citizens (all Arubans are citizens of the Netherlands). Pro Air is an Aruban corporation, wholly owned by Rubert M. Richards, a Dutch citizen. Mr. Richards is also Pro Air's President and chief pilot. All of Pro Air's

(over)

chief management personnel are Dutch citizens. The carrier is properly licensed and designated by the Government of Aruba to perform the proposed services. By memorandum dated March 3, 1998, the FAA advised us that it knew of no reason why we should act unfavorably on Air Aruba's application.

Action taken by:

Paul L. Gretch, Director
Office of International Aviation
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)